IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 383 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SAMAST LOHANA MAHAJAN

Versus

CHUNILAL TRIBHOBVANDAS KARIA

Appearance:

1. Special Civil Application No. 383 of 1993

MR PS CHAMPANERI for Petitioner No. 1

MR AK CLERK for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 24/07/2002

ORAL JUDGEMENT

1. The short facts of the case are that the petitioner, which is a Trust namely, Shree Samast Lohana Mahajan, was registered in the year 1976. At the time

when the Trust came to be constituted, the conditions were that if any person gives donation of Rs.31,000/- his name may be joined with the institution which may be controlled by the Trust and it was also provided that the Managing Committee of the Trust shall be comprising of minimum five persons and maximum eleven persons. Clause 19(3) of the Trust deed also provided that the election of the Managing Committee shall take place every five years. It appears that respondent No.1 shown his willingness to donate Rs.25,551/- on condition that at the main gate of the building which may be constructed by the Trust for the community popularly known as "Wadi", name of respondent No.1 shall be mentioned and the member of the family of the donor or any person suggested by the donor shall be made permanent trustee of the Trust. The donation was accepted by the Trust and the matter was also placed before the general body of the Trust in the meeting dated 14-1-1979 and the general body had also resolved to accept the donation by further resolving that the condition of Rs.31,000/- be substituted by the amount of Rs.25,551/- and also one permanent seat of trustee for the member of the family of the donor or other person who may be suggested by the donor be created. As per contention of Respondents No.1-2 after the general body's resolution on 15-4-1980 a letter was addressed to the Jt. Charity Commissioner, Bhavnagar for the purpose of making change in the constitution of the Trust. Thereafter, whether the Jt. Charity Commissioner has granted permission for the change of the constitution of the Trust or not is not brought on record. The case of respondents No.1 and 2 is that respondent No.2 continued as the permanent trustee, however, the petitioners herein, without knowledge of Respondents No.1 and 2, filed a change report and respondent No.2 was deleted as the trustee.

2. Application No.11/1988 under Section 41A of the Bombay Public Trust Act (hereinafter referred to as "the Act") was filed before the Jt. Charity Commissioner for giving appropriate directions to the Trust to act as per the proceedings of the meeting dated 7-12-1978 and general body's meeting dated 14-1-1979 and also prayed for consequential relief. The Jt. Charity Commissioner heard the matter and examined the record and ultimately passed the order dated 11-11-1992, whereby the application of respondents No.1 and 2 is allowed and a direction is given to the Trust to act as per the resolution dated 7-12-1978 and 14-1-1979 and it is also mentioned that legal formalities for the implementation of the resolution be undertaken.

3. Mr.Chapaneri, learned Counsel for the petitioners, has submitted that he is not aware as to whether, after general body's resolution for accepting the donation from respondents No.1 and 2, the conditions or the constitution of the Trust is amended or whether any sanction has been granted for the amendment of the constitution of the Trust or not. However, the perusal of the order shows that after passing of the resolution, it was case of respondents No.1 and 2 that the proposal was also forwarded as per the letter dated 15-4-1980 to the Jt. Charity Commissioner for making necessary change or amendment in the constitution of the Trust deed. Mr.Chapaneri submitted that the general body had held election in the year 1985 and the change report was already submitted and the same has been accepted and respondents No.1 and 2 did not file any objection to the change report and thereafter they submitted the application under Section 41A of the Act, that too, after a period of almost three years from the date of submission of the change report. Mr.Chapaneri submitted that if any question arises for the purpose of continuing or ascertaining the right as the trustee, the same can only be under the enquiry which may be held under Section 22 of the Act, that too, when the objections are filed against the change report. However, he submitted that such type of enquiry cannot be held under Section 41A of the Act and he further submitted that the order passed by the Jt Charity Commissioner is beyond the scope and ambit of power under Section 41A of the Act. He also submitted that as a matter of fact, the general body has held the election and at the election, since respondent No.2 has not contested and he is not accepted as the trustee and the Jt. Charity Commissioner cannot give a direction under Section 41A of the Act, as per the impugned order.

4. On behalf of respondents No.1 and 2, Mr.Clerk has submitted that when the donation was offered by respondent No.1, the petitioner Trust and rather the general body of the petitioner Trust agreed for acceptance of the conditions, which were put by respondents No.1 and 2 and not only that, but thereafter steps were taken for the purpose of making amendment in the constitution of the Trust. However, he submitted that the said acceptance was further acted upon in as much as respondent No.2 continued as the trustee of the Trust for about more than five years and thereafter it was not open to the Trust to back out once having accepted the donation. Mr.Clerk submitted that the trustees who are trying to back out from the conditions, which were accepted by them, cannot be allowed to invoke equitable jurisdiction of this Court under Article 226 of

the Constitution when the Jt. Charity Commissioner, upon the record available, has found that the Trust must act as per the resolution of the meeting dated 7-12-1978 and 14-1-1979. Mr.Clerk also submitted that so far as the change report is concerned, respondents No.1 and 2 were not aware of the same at any point of time and there was no necessity for respondent No.2 to contest the election since he was also accepted as the permanent trustee pursuant to the resolution of the general body dated 14-1-1979 and, therefore, Mr.Clerk has submitted that the order passed by the Jt. Charity Commissioner is legal and valid and calls for no interference.

5. The factual aspect of the case goes to show that the donation of Rs.25,551/- was accepted by the petitioner Trust and it appears that the conditions for the purpose of putting the name plate and induction as the trustee were accepted. It does not come from the record that whether any steps were taken for the purpose of amendment of the constitution of the Trust or not. It is true the case of respondents No.1 and 2 is that the letter dated 15-4-1980 was forwarded to the Jt. Charity Commissioner for the purpose of making necessary change in the constitution of the Trust. However, the said aspect is denied by Mr.Chapaneri on behalf of the petitioners. But the finding of fact by the Joint Charity Commissioner is that the general body accepted the donation on the conditions suggested by respondents No.1 and 2. The power under Section 41A of the Act, at the most, could be exercised for the purpose of giving directions in consonance with the Trust deed itself. The Jt. Charity Commissioner, while passing the impugned order, has not taken into consideration the important aspect of the Trust itself or the Trust deed. He has not examined as to whether the Trust deed was amended or the constitution of the Trust was amended as per the resolution of the general body or not and as to whether any sanction was granted or not. The aforesaid aspect goes to the root of the matter and can be rather the basis of the direction under Section 41A of the Act. Since the said aspect is not taken into consideration by the Jt. Charity Commissioner while passing the impugned order, I am of the view, that the matter deserves to be remanded to the Jt. Charity Commissioner for reconsideration. It is also made clear that as and when the matter is considered by the Jt. Charity Commissioner, both the parties will be at liberty to raise all contentions available under the law on the basis of material and record of the case. However, the Jt. Charity Commissioner shall pass the order afresh keeping in view the crucial aspects of the case as to

whether the constitution of the Trust has been amended or not.

6. In view of the above, the order dated 11-11-1992 passed by the Jt. Charity Commissioner is quashed and set aside with the direction that the Jt. Charity Commissioner shall decide the matter afresh as per the observations made earlier in this order and in accordance with law and also after giving opportunity of hearing to both sides.

7. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs. Office to send the writ forthwith.

24-7-2002 (Jayant Patel, J.)

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